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SEP 07 2004

**PATENT
Attorney Docket No. 42390.P9791C**

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of)	
)	
Robert Fritzinger et al.)	Group Art Unit: 2642
)	
Application No.: 09/817,581)	Examiner: W. Deane, Jr.
)	
Filed: March 26, 2001)	
)	
For: VIRTUAL TELEPHONE)	
)	
)	
)	

APPEAL BRIEF

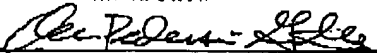
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants submit herewith an Appeal Brief as required by 37 C.F.R. § 1.192. This Appeal Brief is in response to the Final Office Action dated April 7, 2004 and in support of the Notice of Appeal filed July 7, 2004.

I. REAL PARTY IN INTEREST

The real party in interest is Intel Corporation, a corporation of Delaware.

CERTIFICATE OF TRANSMISSION	
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By:  Alan Pedersen-Giles	Date: <u>September 7, 2004</u>

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II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants which will directly affect or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS:

Claims 1-10, 15-19, and 29-39 are pending in the application. These claims are reproduced in the attached Appendix.

Claims 1-10, 15-19, and 29-39 stand finally rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Walsh et al. (U.S. Patent No. 5,642,410) in view of Melkild et al. (U.S. Patent No. 6,014,440).

The rejection of claims 1-10, 15-19, and 29-39 is appealed.

IV. STATUS OF AMENDMENTS:

A Response After Final under 37 C.F.R. 1.116 was filed on June 7, 2004, but this response contained no proposed amendments.

Appellants note, however, that claims 8 and 15, as filed, ended with “; and” punctuation. For the sake of correct punctuation, “; and” has been replaced with a period in claims 8 and 15 below in Appendix X.

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V. SUMMARY OF THE INVENTION:

The present invention relates to a communication system (see, e.g., Fig. 2) including a telephone switch 12 and at least one communication device (e.g., network application 50, PC 44, PC 16, and/or device 36). The system may also include a virtual phone 18 between the telephone switch 12 and the communication device 50/44/16/36. Virtual phone 18 (e.g., VPAPI 22, 24) may serve as a protocol interpreter of the protocol of the telephone switch 12 and may convert the protocol of the telephone switch 12 and the protocols of applications associated with the operation of the switch and the communication device 50/44/16/36 into a common protocol format (see, e.g., page 29, first full paragraphs) to enable communication between the switch 12 and the communication device 50/44/16/36.

VI. ISSUE:

- A. Whether claims 1-10, 15-19, and 29-39 are unpatentable under 35 U.S.C. § 103(a) over Walsh et al. (U.S. Patent No. 5,642,410) in view of Melkild et al. (U.S. Patent No. 6,014,440).

VII. GROUPING OF CLAIMS:

Claims 1-10, 15-19, and 29-39 do not stand or fall together.

Claims 1-4, 7, 15-17, 29, 30, and 34-39 stand or fall together. Claim 1 is representative of the group.

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Claims 5, 6, 8-10, 18, and 19 stand or fall together. Claim 5 is representative of the group.

Claims 31-33 stand or fall together. Claim 31 is representative of the group. These three groups of claims are separately argued below.

VIII. ARGUMENT:

A. Claims 1-10, 15-19, and 29-39 are patentable under 35 U.S.C. § 103(a) over Walsh et al. in view of Melkild et al.

1. All pending claims are patentable, because the Examiner has failed to meet the evidentiary burden necessary to establish a *prima facie* case.

The Examiner has failed to carry his initial burden of making a *prima facie* showing of a teaching or suggestion of each element of claims 1-10, 15-19, and 29-39. 37 C.F.R. § 104(c)(2) requires of the Examiner that "the particular part [of the reference] relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." The Examiner has not complied. In particular, in the Final Office Action mailed April 7, 2004 the Examiner read no elements of the claims on the references.

On page 2 of the Final Office Action, the Examiner refers to only two portions of Walsh et al. (one of which spans nearly three columns and the other of which is an object of the invention) and only one portion of Melkild et al., the summary. None of the three cited portions of Walsh et al. and Melkild et al., are discussed with regard to particular claim elements. As a matter of evidence, three block cites that are unrelated to claim elements is an insufficient

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amount to establish a *prima facie* case of obviousness. See M.P.E.P. § 2142 ("The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.").

The Examiner has abdicated his responsibility to interpret the claims under M.P.E.P. § 2111. Without an interpretation of the claims as they relate to the applied references, the stated rejection of claims 1-10, 15-19, and 29-39 amounts to an unsupported allegation of obviousness. As the predecessor court to the Federal Circuit stated, "We think it is incumbent on the Patent Office in the first instance to set forth clearly why it regards a claim to be anticipated, obvious or otherwise defective." *In re Mullin*, 481 F.2d 1333, 179 USPQ 97 (CCPA 1973). Without such a clear, particular interpretation of the claims, a *prima facie* case of obviousness cannot be established, and the rejection of all pending claims, 1-10, 15-19, and 29-39, should be reversed on this ground.

2. Claims 1-4, 7, 15-17, 29, 30, and 34-39 are patentable over Walsh et al. in view of Melkild et al.

In addition to the reasons given above in section VIII(A)(1), claims 1-4, 7, 15-17, 29, 30, and 34-39 are allowable for the following reasons.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

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a. There is no suggestion to combine reference teachings.

A *prima facie* case of obviousness has not been established for claims 1-4, 7, 15-17, 29, 30, and 34-39, at least because no motivation has been provided to combine Walsh et al. and Melkild et al. The proposed justification on page 2 of the Office Action, "to bring a higher degree of flexibility and efficiency to the system," is conclusory and devoid of citation to either reference. Such a bare conclusion does not establish a *prima facie* case of obviousness without evidence supporting that conclusion. No reasoning, in the references or otherwise, has been provided detailing what deficiency or need in the State Machine¹ of Walsh et al. would have motivated one of ordinary skill in the art to add the teachings of Melkild et al. In the absence of such evidence, a *prima facie* case of obviousness cannot be established for claims 1-4, 7, 15-17, 29, 30, and 34-39.

b. References teach away from proposed combination.

A *prima facie* case of obviousness also has not been established, because at least Melkild et al. teaches away from the proposed combination. See M.P.E.P. § 2145(X)(D) ("proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference"). As is apparent from col. 3, lines 34-49, Melkild et al. discloses various schemes for protocol matching between an originating call handler (OCH) and a terminating call handler (TCH), both located in a switching node 16. Thus, Melkild et al. at most suggests matching protocols in a switching node (e.g., node 16), but not in "a virtual phone

¹ Appellants assume, but do not know for sure, that the cited col. 11, line 13 to col. 13, line 55 of Walsh et al. reflects an intention to read the claims on the State Machine mentioned therein.

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generic configurable interface" connected "between [a] telephone switch and [a] communication device" as set forth, for example in claim 1. At most, Melkild et al. suggests a common protocol, within a switching node, but cannot be said to teach common protocols generally. To move this protocol matching function out of the switching node 16 would change the principle of operation and intended purpose of the switching node of Melkild et al.

Further, such would also alter the principle of operation of the State Machine of Walsh et al. As stated in col. 12, lines 52-54, "the run time portion of the invention is completely 'event driven', and the actions that are taken based upon the event are embodied in the State Machine." Walsh et al., then, merely teaches a state machine changing states in reaction to events. Adding conversion of protocols into a common format from Melkild et al. would change the "event-driven" principle of operation taught by Walsh et al. Thus, the references teach away from the proposed combination. A *prima facie* case of obviousness has not been established for claims 1-4, 7, 15-17, 29, 30, and 34-39 on this additional ground.

3. Claims 5, 6, 8-10, 18, and 19 are patentable over Walsh et al. in view of Melkild et al.

In addition to the reasons given above in sections VIII(A)(1) and VIII(A)(2), dependent claims 5, 6, 8-10, 18, and 19 are allowable for the following reasons.

a. The combination fails to teach or suggest all elements of claims 5, 6, 8-10, 18, and 19.

A *prima facie* case of obviousness has not been established for claims 5, 6, 8-10, 18, and 19, because the references as combined fail to teach or suggest all of the claim elements. Claim 5, for example, requires a virtual phone generic configurable interface including, *inter alia*, "a set

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of virtual phone data structures; and a program interface to access said data structures.” Claims 8 and 18 require similar elements. The combination of Walsh et al. and Melkild et al. fails to teach or suggest the above quoted elements of claim 5.

Page 2 of the Final Office Action appears to alleges that the above-quoted elements of claim 5 are taught or suggested by a modified State Machine of Walsh et al. Assuming, purely for the sake of argument, that Walsh et al. and Melkild et al. were properly combinable and that the modified state machine of Walsh et al. included to the claimed data structures, the combination fails to teach or suggest a program interface to access data structures. Col. 11, lines 26-29, of Walsh et al. provides that the state machine may have eleven states. Col. 11, lines 33-39, of Walsh et al. provides that events to which the state machine responds are represented by messages. Neither these portions of col. 11, nor the rest of Walsh et al., teaches or suggests “a program interface to access said data structures,” as required by claim 5.

The addition of Melkild et al. fails to cure this deficiency of Walsh et al. For example, none of Figs. 1-3 of Melkild et al. reasonably illustrates anything that corresponds to the claimed program interface. Nor has any such program interface been shown in either reference in the Final Office Action. Because the combination of Walsh et al. and Melkild et al. fails to teach or suggest at least the above quoted elements, a *prima facie* case of obviousness cannot be established, and the rejection of claims 5, 6, 8-10, 18, and 19 should be reversed on this additional ground.

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4. Claims 31-33 are patentable over Walsh et al. in view of Melkild et al.

In addition to the reasons given above in sections VIII(A)(1) and VIII(A)(2), dependent claims 31-33 are allowable for the following reasons.

a. The combination fails to teach or suggest all elements of claims 31-33.

A *prima facie* case of obviousness has not been established for claims 31-33, because the references as combined fail to teach or suggest all of the claim elements. Claim 31 requires, *inter alia*, “wherein a first data bearer channel and a first control channel each are connected to said communication switch and to said media control proxy and a second data bearer channel and a second control channel are connected to said media control proxy and to said communication device.” The combination of Walsh et al. and Melkild et al. fails to teach or suggest the above quoted elements of claim 31.

Page 2 of the Final Office Action, and the portions of Walsh et al. cited therein, do not address the above-quoted element of claim 31. Fig. 1, the only system figure in Walsh et al., however, does not teach or suggest the claimed data bearer channels and control channels. Neither the “to/from phone device” line nor the “to/from PBX” line in Fig. 1 teaches or suggests the claimed the claimed data bearer channels and control channels. Similarly, col. 5, line 30, to col. 6, line 20 of Walsh et al., which describes Fig. 1, also fails to teach or suggest the data bearer channels and control channels as set forth in claim 31.

The addition of Melkild et al. fails to cure this deficiency of Walsh et al. For example, none of Figs. 1-3 of Melkild et al. reasonably teaches or suggests channels that correspond to the claimed data bearer channels and control channels. Nor have any such data bearer channels and

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control channels been shown in either reference in the Final Office Action. Because the combination of Walsh et al. and Melkild et al. fails to teach or suggest at least the above quoted elements, a *prima facie* case of obviousness cannot be established, and the rejection of claims 31-33 should be reversed on this additional ground.

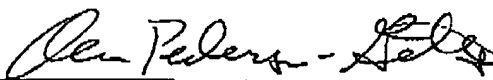
IX. CONCLUSION

For the reasons set forth above, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejection of claims 1-10, 15-19, and 29-39.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0221 and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: September 7, 2004



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X. APPENDIX

1. In a communication system comprising at least one telephone switch and at least one communication device:

a virtual phone generic configurable interface between said telephone switch and said communication device to serve as a protocol interpreter of the protocol of said telephone switch and to convert the protocol of said telephone switch and the protocols of applications associated with the operation of said switch and said communication device into a common protocol format to enable communication between said switch and said communication device.

2. A system according to claim 1, wherein said means for providing a virtual phone generic configurable interface includes a set of virtual phone data structures to represent the state of a phone as known to the telephone switch at any given time.

3. A system according to claim 1, wherein said virtual phone generic configurable interface includes a component to provide a virtual phone application program interface for providing data communication between said telephone switch and said communication device.

4. A system according to claim 1, wherein said virtual phone generic configurable interface includes a component to provide a communications protocol for the transfer of phone control information between said telephone switch and said communication device.

5. A system according to claim 1, wherein said means for providing a virtual phone generic configurable interface comprises:

- a) a set of virtual phone data structures to represent the state of a phone as known to the telephone switch at any given time; and
- b) a program interface to access said data structures.

6. A system according to claim 5, wherein said program interface to access said data structures comprises a virtual phone application program interface to provide data communication between said set of virtual phone data structures and said switch and said communication device.

7. In a telephone communication system comprising at least one telephone switch, at least one telephone and a computer to process applications related to the operation of said telephone switch and said telephone:

a virtual phone generic configurable interface to serve as a protocol interpreter between protocols of said telephone switch and protocols of said applications to convert the protocols of said telephone switch and the protocols of said applications into a common protocol format to enable communication between said telephone switch and said telephone.

8. A system according to claim 7, wherein said virtual phone generic interface comprises:

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- a) a set of virtual phone data structures to represent the state of a phone as known to the telephone switch at any given time; and
- b) a program interface to access said data structures; and
- c) a protocol to establish communication between said computer and said data structures.

9. A system according to claim 8, wherein said program interface to access said data structures comprises:

- a) an internal virtual phone application program interface to provide data communication between said set of virtual phone data structures and said telephone switch and said telephone; and
- b) an external virtual phone application program interface to provide data communication between said set of virtual phone data structures and said computer.

10. A system according to claim 9, further including a communications protocol to provide communication between said external virtual phone application program interface and said computer.

15. A method for providing communication in a system comprising at least one telephone switch and at least one communication device, said method comprising:

- a) providing a virtual phone generic configurable interface to serve as a protocol interpreter of the protocol of said telephone switch; and

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b) utilizing said virtual phone generic configurable interface to convert the protocol of said telephone switch and the protocols of applications associated with the operation of said telephone switch and said communication device into a common protocol format to enable communication between said telephone switch and said communication switch.

16. A method according to claim 15, wherein said providing a virtual phone generic configurable interface comprises providing a set of virtual phone data structures for representing the state of a phone as known to the telephone switch at any given time.

17. A method according to claim 15, wherein said providing a virtual telephone generic configurable interface comprises providing a virtual phone application program interface for providing data communication between said telephone switch and said communication device.

18. A method according to claim 15, wherein said providing a virtual phone generic configurable interface comprises:

- a) providing a set of virtual phone data structures for representing the state of a phone as known to the telephone switch at any given time; and
- b) providing a program interface for accessing said structures.

19. A method according to claim 18, wherein said providing a program interface for accessing said data structures comprises providing a virtual phone application program interface

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for providing data communication between said set of virtual phone data structures and said switch and said communication device.

29. In a communication system comprising at least one communication switch and at least one communication device:

a media control proxy to serve as a gateway between said communication switch and said communication device to bridge any gap in communication protocols between said communication switch and said communication device and to convert said communication protocols to a common protocol format to enable communication between said communication switch and said communication device.

30. A system according to claim 29, wherein said media control proxy includes a component to convert a fixed control protocol of an original connection between said communication switch and said communication device to a communications method for supporting any given communication device.

31. A system according to claim 29, wherein a first data bearer channel and a first control channel each are connected to said communication switch and to said media control proxy and a second data bearer channel and a second control channel are connected to said media control proxy and to said communication device.

32. A system according to claim 31, wherein said media control proxy includes a component to pass through data on said first and second data bearer channels.

33. A system according to claim 31, wherein said media control proxy includes a processor to process information on said first and second control channels for conversion to a protocol understood by said communications device.

34. A method for providing communication in a system comprising at least one communication switch and at least one communication device, said method comprising:

a) providing a media control proxy to serve as a gateway between said communication switch and said communication device to bridge any gap in communication protocols between said communication switch and said communication device and to convert said communication protocols to a common protocol format; and

b) utilizing said media control proxy to enable communication between said communication switch and said communication device.

35. A method according to claim 34, wherein said providing a media control proxy comprises connecting a fixed control protocol of an original connection between said communication switch and said communication device to a communications method for supporting any given communication device.

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36. A method according to claim 34, wherein said providing a media control proxy comprises passing through bearer channel data between said communication switch and said communication device.

37. A method according to claim 34, wherein said providing a media control proxy comprises processing control information from said communication switch for conversion to a protocol understood by said communication device.

38. A method according to claim 34, wherein said providing a media control proxy comprises interpreting control information received from said communication switch and maintaining the state of the communication device as defined by the communication switch.

39. A method according to claim 34, wherein said providing a media control proxy comprises transmitting data to said communication switch on a control channel between said media control proxy and said communication switch in a protocol native to said communication switch so that said communication switch interprets a message from said media control proxy as a message from said communication device.

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Urgent

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Date: September 7, 2004

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Art Unit:
2642

From:
Alan Pedersen-Giles

Fax:
703-633-3303

M/S:

Subject: Virtual Telephone

Application No.: 09/817,581; Inventor: Robert Fritzinger, et al.

Filed: 3/26/01


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Fee Transmittal (1 page, submitted in duplicate)

Appeal Brief (17 pages)

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PTO/SB/21 (08-03)


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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/817,581	
	Filing Date	March 28, 2001	
	First Named Inventor	Robert Fritzing	
	Art Unit	2842	
	Examiner Name	William J. Deane, Jr.	
Total Number of Pages in This Submission	20	Attorney Docket Number	P9791c

ENCLOSURES (Check all that apply)		
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Remarks In view of pending new Rule 37 CFR 41.37, the Brief is not submitted in triplicate.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Alan Pedersen-Giles, Reg. No. 39,995 Intel Americas, Inc.
Signature	
Date	September 7, 2004

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Typed or printed name	Alan Pedersen-Giles		
Signature		Date	September 7, 2004

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**FEE TRANSMITTAL
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Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 330.00)

Complete if Known

Application Number	09/817,581
Filing Date	March 26, 2001
First Named Inventor	Robert Fritzinger
Examiner Name	William J. Deane, Jr.
Art Unit	2642
Attorney Docket No.	P9791c

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☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** =	X	
Multiple Dependent Claims	-3** =	X	

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 86	2201 43	Independent claims in excess of 3
1203 290	2203 145	Multiple dependent claim, if not paid
1204 86	2204 43	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	2053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	330.00
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1602 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 330.00)

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Alan Pedersen-Giles	Registration No. (Attorney/Agent)	39,996	Telephone	703-633-1061
Signature	<i>Alan Pedersen-Giles</i>	Date	September 7, 2004		

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